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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission 25FD

COMMISSIONERS

DOCKETED

DEC 14 2005

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY	<i>ML</i>
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IN THE MATTER OF THE APPLICATION OF
QWEST COMMUNICATIONS
CORPORATION D/B/A QWEST LONG
DISTANCE FOR EXTENSION OF ITS
EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
INCLUDE AUTHORITY TO PROVIDE
RESOLD AND FACILITIES-BASED LOCAL
EXCHANGE AND RESOLD LONG
DISTANCE SERVICES IN ADDITION TO ITS
CURRENT AUTHORITY TO PROVIDE
FACILITIES-BASED LONG DISTANCE
SERVICES, AND PETITION FOR
COMPETITIVE CLASSIFICATION OF
PROPOSED SERVICES WITHIN THE STATE
OF ARIZONA.

DOCKET NO. T-02811B-04-0313

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PROCEDURAL ORDER

BY THE COMMISSION:

On April 23, 2004, Qwest Communications Corporation d/b/a Qwest Long Distance¹ ("QCC") filed an Application and Petition with the Arizona Corporation Commission ("Commission") requesting that its existing Certificate of Convenience and Necessity ("CC&N") be extended to include the authority to provide resold long distance service, resold local exchange service and facilities-based local exchange service in addition to the facilities-based long distance authority previously granted.² QCC operates as a Section 272 affiliate of Qwest Corporation, which is a regional bell operating company ("RBOC") and an incumbent local exchange carrier ("ILEC").

On May 16, 2005, QCC filed a Second Supplement to Application and Petition, which requested that QCC's existing CC&N for competitive facilities-based long distance service be amended to include competitive resold long distance service on a statewide basis; and competitive

¹ The application states that the applicant does business under the d/b/a Qwest Long Distance for its interexchange business.

² See Decision No. 66612 (December 10, 2003).

1 resold and facilities-based local exchange service on a statewide basis only for large business
2 customers or accounts ("Enterprise Market" customers).

3 No intervention requests were filed. The hearing on this matter commenced May 17, 2005,
4 was continued, reconvened on August 29, 2005, and concluded on that date. QCC and Staff filed
5 closing briefs on September 30, 2005.

6 A full review of the factual record and legal issues in this proceeding has been undertaken,
7 and a Recommended Opinion and Order is being prepared for submission to the Commission for its
8 final disposition.

9 Qwest Corporation did not intervene in this matter. After a full review of the factual record, it
10 appears that a just and equitable adjudication of QCC's application requires the joinder of Qwest
11 Corporation as a party, in order to have its interests represented.

12 The Commission's procedural rules do not directly address the joinder of persons needed for
13 just adjudication. However, A.A.C. R14-3-101.A provides that in cases in which procedure is not set
14 forth by law or by rules or regulations of the Commission, the Rules of Civil Procedure for the
15 Superior Court of Arizona shall govern. The Arizona Rules of Civil Procedure provide as follows:

16 A person who is subject to service of process and whose joinder will not deprive the
17 court of jurisdiction over the subject matter of the action shall be joined as a party in
18 the action if (1) in the person's absence complete relief cannot be accorded among
19 those already parties, or (2) the person claims an interest relating to the subject of the
20 action and is so situated that the disposition of the action in his absence may (i) as a
21 practical matter impair or impede the person's ability to protect that interest (ii) leave
22 any of the persons already parties subject to a substantial risk of incurring double,
23 multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the
24 person has not been so joined, the court shall order that the person be made a party. If
25 the person should join as a plaintiff but refuses to do so, the person may be made a
26 defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to
27 venue and joinder of that party would render the venue of the action improper, that
28 party shall be dismissed from the action.

Rule 19(a), Arizona Rules of Civil Procedure

25 Rule 21 of the Arizona Rules of Civil Procedure further provides that parties may be dropped
26 or added by order of the court on motion of any party or of its own initiative at any stage of the action
27 and on such terms as are just.

28 During the proceeding on QCC's application, QCC made a point of the fact that Qwest

1 Corporation is not a party to this matter.³ We are concerned with the fact that while Qwest
2 Corporation was not formally represented in these proceedings, evidence was presented that Qwest
3 Corporation may be adversely impacted by revenue losses, if QCC is granted the authority it requests
4 to provide services in direct competition with Qwest Corporation for Enterprise Market customers,
5 using the Qwest name. We find that Qwest Corporation clearly has an interest in this matter that
6 requires its participation in this proceeding.

7 IT IS THEREFORE ORDERED that pursuant to Arizona Administrative Code R14-3-101.A;
8 Arizona Rules of Civil Procedure Rule 19(a) and Rule 21, Qwest Corporation is hereby joined as an
9 indispensable party to this proceeding for the reasons set forth herein.

10 IT IS FURTHER ORDERED that Qwest Corporation shall make a filing in this docket, no
11 later than December 23, 2005, stating whether it prefers to submit its position through the filing of
12 briefs based on the existing evidentiary record, or whether the record should be reopened to obtain
13 additional factual information regarding the effect on Qwest Corporation of granting Qwest
14 Communications Corporation's application. Qwest Corporation shall also submit with its filing its
15 brief or a proposed schedule for briefing, or a proposed schedule for filing of testimony and hearing
16 dates.

17 IT IS FURTHER ORDERED that the Utilities Division Staff and Qwest Communications
18 Corporation shall file a response to Qwest Corporation's filing within 7 days of Qwest Corporation's
19 filing.

20 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
21 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

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27 ³ Qwest Corporation is likely to have constructive notice of QCC's application, since QCC was represented throughout
28 this proceeding by Qwest Corporation's corporate counsel, through the Qwest Law Department, and QCC's witness
stated that she spends a predominant amount of her employment time working for Qwest Corporation.

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
2 Communications) continues to apply to this proceeding.

3 DATED this 14th day of December, 2005.

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6 
TEENA WOLFE
ADMINISTRATIVE LAW JUDGE
7

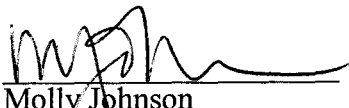
8 The foregoing was mailed/delivered
9 this 14 day of December, 2005 to:

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23 By: 
24 Molly Johnson
25 Secretary to Teena Wolfe
26
27
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